

**PURCHASE AGREEMENT FOR WATER TRANSFER
BETWEEN WESTERN CANAL WATER DISTRICT AND DUDLEY RIDGE WATER
DISTRICT, KERN COUNTY WATER AGENCY**

This Purchase Agreement for Water Transfer ("Agreement") is effective April 20, 2012, by and between (1) Western Canal Water District ("WCWD") and (2) DUDLEY RIDGE WATER DISTRICT, AND KERN COUNTY WATER AGENCY (Hereafter known as "BUYERS").

RECITALS

A. WCWD is a public agency irrigation district formed and operating pursuant to Division 13 of the California Water Code (Cal. Water Code Sections 34000 *et seq.*), and is empowered to sell water to BUYERS as provided for in this Agreement.

B. BUYERS are public agencies formed and operating under the California Water Code and are empowered to purchase water from WCWD as provided for in this Agreement for delivery to their customers.

C. This Agreement allows for BUYERS, willing purchasers, to acquire from WCWD, a willing seller, water supplies that BUYERS have determined are needed for use in BUYERS' service areas. The water supplies to be transferred under this Agreement will be a portion of the water available to WCWD under its diversion agreement, dated January 17, 1986, with the State of California, acting by and through its Department of Water Resources ("DWR").

D. The water made available for transfer under this Agreement will result from crop idling undertaken by landowners growing rice within WCWD's boundary. All crop idling will occur on acreage that would have been planted with rice but for the crop idling that will occur under

this Agreement. The rice acreage within WCWD which is eligible for inclusion in the program is shown in **APPENDIX A**, Table 1.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants and conditions contained herein, the Parties agree as follows:

1. ***Recitals Incorporated.*** The foregoing Recitals are incorporated herein by reference.
2. ***Definitions.*** The following terms shall have the following meanings as used herein:
 - (a) "Consumptive Use" is the evapotranspiration of applied water (ETA_W), which consists of the portion of the applied irrigation water evaporated from soil or plant surfaces, transpired by the plant or incorporated into plant tissue. For purposes hereof, the Consumptive Use of rice is 3.3 acre-feet (AF)/Acre.
 - (b) "Contract Interest Rate" is the rate of interest paid monthly by the Local Agency Investment Fund (LAIF), calculated from the date of the payment being refunded.
 - (c) "Crop Idling" is withholding irrigation water from land such that there is no agricultural production of crops.
 - (d) "Crop Idling Water Transfer Program" is the program developed and implemented by WCWD in accordance with this Agreement and after compliance with the California Environmental Quality Act ("CEQA").
 - (e) "Participating Acre" is each acre of idled rice acreage shown in Appendix A, Table 1 that is enrolled in the WCWD 2012 Crop Idling Water Transfer Program through an agreement between the landowners and WCWD.

(f) "Parties" are the BUYERS and WCWD. DWR, while not a Party, does have authority to consent to this Agreement.

3. ***Term.*** This Agreement shall be effective on the date fully executed and shall be in effect for a term ending December 31, 2012. No right of renewal or right to enter into extensions of this Agreement or to enter into any new water transfer agreement is expressly granted hereunder, nor may such a right be implied from the execution of this Agreement.

4. ***Agreement to Transfer Water.***

(a) The BUYERS have entered into a "State Water Contractors 2012 Water Transfer Agreement" ("SWC Agreement"). In the SWC Agreement, the BUYERS authorized the State Water Contractors ("Contractors") to handle all payments and disbursements described in this Agreement on the BUYERS' behalf. The SWC Agreement requires BUYERS to deposit with the Contractors funds necessary to make the payments for water and the BUYERS' share of regulatory costs, and authorizes the Contractors to make all such payments to WCWD required by this Agreement. Consequently, WCWD shall send all notices or invoices required by this Agreement to the Contractors with a copy to each BUYER, and the Contractors shall send all notices and payments to WCWD under this Agreement on behalf of the BUYERS. The Contractors shall make all payments to WCWD required in accordance with this Agreement on the BUYERS' behalf. Nothing in this Section 4(a) shall affect or limit the BUYERS' duties and obligations under this Agreement and they remain jointly and severally obligated to make the subject payments to WCWD, notwithstanding performance or non-performance on the part of the Contractors.

(b) WCWD agrees to sell, and BUYERS agree to buy, at a price of \$660 for each Participating Acre (calculated on the basis of \$200/AF, multiplied by 3.3/Participating Acre) the surface water supply derived from the idling of up to 11,628 Participating Acres within the

boundary of WCWD for delivery in 2012. WCWD will invoice BUYERS, and BUYERS will make the required payments as provided in Section 5.

(c) If the shortage provision of WCWD's diversion agreement with DWR dated January 17, 1986, is triggered, then WCWD will not participate in a land idling transfer and this agreement will be deemed terminated. Prior to termination, however, WCWD and the BUYERS shall confer to determine if, as an alternative to termination, the Participating Acres specified in Section 4(b) should be adjusted to a lower quantity.

5. *Payments for Participating Acreage.*

(a) The total purchase price for water made available by crop idling shall be \$660 per Participating Acre, provided that WCWD complies with the provisions of DWR's Draft Technical Information for Water Transfers in 2012, as revised in February 2012 ("Technical Information"). The \$660 per Participating Acre shall not be reduced except upon a determination by DWR that the Participating Acres, or a portion thereof, are not in compliance with the Technical Information including, for example, Participating Acreage with excessive weeds or excessive seepage. The price of \$660 per Participating Acre shall not be reduced for matters or conditions not clearly described and/or prohibited in the Technical Information. Neither this section, nor any other provision in this Agreement, shall establish precedent or be considered binding on the Parties regarding the terms and conditions of agreements governing possible future transfers.

(b) Within 10 days from the end of each calendar month commencing in May 2012 through September 2012, WCWD shall invoice BUYERS for the payment required by Section 5(a) of this Agreement for each Participating Acre, to be paid in five equal installments over the period June through October. For example, WCWD shall invoice BUYERS by June 10 for one-fifth of the purchase price with the final invoice sent by October 10. BUYERS will pay 90 percent of the invoice amount within 30 days from the date of the invoice. BUYERS will retain

10 percent of each invoice amount pending DWR's final confirmation that WCWD delivered the amount of water as invoiced at the Point of Delivery, as defined in Section 6(d), and BUYERS will pay the final 10 percent within 30 days of DWR's determination, based on the report prepared pursuant to Section 6(a). Payments not made within either 30-day period shall accrue interest at the Contract Interest Rate, compounded monthly.

(c) It is understood by BUYERS that once lands are idled under this Agreement, said lands cannot be feasibly returned to agricultural production during 2012, and therefore so long as the lands remain fallow under the terms of this Agreement, in the event of failure to pay the amounts due in accordance with this Agreement, BUYERS shall not claim that damages must be mitigated by the planting of previously idled acreage. Additionally, upon execution of this Agreement, BUYERS shall be obligated to make the payments consistent with the terms of this Agreement notwithstanding any other fact or condition, presently known or unknown, with the exception of amounts that may be refundable to BUYERS in Section 5(d), below.

(d) In the event WCWD fails to idle the Participating Acres necessary to provide the water requested pursuant to Section 6(a), for which BUYERS have contracted for, WCWD will promptly refund to BUYERS any payments made in accordance with this Agreement for each Participating Acre not idled. Any refunds shall include interest at the Contract Interest Rate.

6. *Water To Be Transferred; Delivery Conditions; Point of Delivery.*

(a) WCWD shall notify BUYERS of the amount of water offered by 5:00 pm March 30, 2012. Until April 20, 2012, WCWD may, in its sole discretion, reduce in whole or in part the amount of water being offered from crop idling it wishes to make available to BUYERS. BUYERS shall notify WCWD whether they want to buy the total amount of water offered, in their sole discretion, on or before 5:00 pm April 20, 2012. Failure by Buyers to notify WCWD

on or before 5:00 p.m. on April 20, 2012, shall be deemed an election by Buyers to take all water made available by WCWD. Once Buyers have notified WCWD of their intent to buy water, BUYERS will have a "take or pay" obligation for the amount of water specified in their notice that is determined to be transferable by DWR.

(b) Upon executing this Agreement, WCWD agrees to enter into agreements with landowners ("Landowner Agreements") within its boundary to idle up to 11,628 Participating Acres from April 20 to September 30 that would otherwise be devoted to the cultivation of rice but for its performance under this Agreement, thereby forgoing irrigation for some or all of that quantity of water that WCWD would have otherwise provided to the landowner during the 2012 irrigation season from April 20 to September 30, 2012. By means of cropland idling, WCWD shall reduce its diversions by an amount commensurate with the reduction in consumptive use of the Participating Acres and make available from its DWR diversion agreement the consumptive use of said Participating Acres in accordance with the formula set forth in Appendix A, Table 2. The Participating Acres idled within WCWD will be determined based upon: (1) a comparison of the amount of crop acreage that the Parties agree would otherwise be planted during the 2012 irrigation season within WCWD's boundary as shown in **Appendix A**, Table 1; and (2) the consumptive use schedule for the lands idled during the 2012 irrigation season as shown in **Appendix A**, Table 2.

(c) Other than as appropriate to reflect WCWD's commitment to reduce diversion from Lake Oroville by depriving Participating Acres of WCWD-supplied surface water, this Agreement places no requirement or restriction on WCWD's diversions of surface water under its diversion agreement or groundwater use by landowners within WCWD in 2012.

(d) The point of delivery of water made available by WCWD to BUYERS under this Agreement shall be DWR's delivery points to WCWD from the Thermalito Afterbay and

WCWD shall not schedule the delivery from State Water Project (SWP) facilities of water to be transferred under this Agreement. BUYERS shall be responsible for and shall bear all risks for all conveyance and other losses related to the inability of BUYERS or DWR to convey the water from the point of delivery to BUYERS, and for any carriage water losses assessed against BUYERS by DWR. BUYERS understand and acknowledge that the transfer of water will occur within the current and future regulatory parameters for the SWP, including all Biological Opinion requirements under the federal and state endangered species acts and any additional restrictions being implemented as a result of interim operational remedies imposed by a State or Federal court. WCWD shall in no way be responsible for BUYERS' inability, infeasibility, frustration of purpose, or increased expenses resulting from transferring or transporting the water after the point of delivery. BUYERS' obligations under this Agreement shall remain the same notwithstanding difficulty, increased costs, or inability to transport the water to BUYERS' place of use.

(e) No later than December 15, 2012, WCWD, in consultation with DWR and BUYERS, shall complete a report that accounts for all acreage idled and water thereby made available to BUYERS at the point of delivery under this Agreement.

(f) WCWD shall provide DWR with the plat maps submitted by its landowners delineating the location, boundaries, and acreage of lands being idled pursuant to this Agreement within fifteen (15) days of execution of this Agreement. The maps will be used for monitoring and inspection activities, including on-site field verification and aerial photography to verify the Participating Acres idled pursuant to this Agreement. WCWD agrees that it and its landowners will allow BUYERS and DWR representatives access to the facilities, lands and records of WCWD and its landowners to the extent necessary to verify performance under this Agreement.

(g) The water made available by WCWD's reduction in diversions pursuant to this Agreement shall be for the exclusive use of the BUYERS, and WCWD shall take no actions that would reduce the water transferred under this Agreement.

7. *Obtaining Approvals, Environmental Compliance and Related Costs.*

(a) WCWD is required to obtain DWR's consent to the water transfer provided for under this Agreement. BUYERS and WCWD will cooperate with and assist each other as necessary in obtaining approval and agreement from DWR.

(b) WCWD and BUYERS are required to comply with the environmental review requirements of CEQA prior to entering into this Agreement. WCWD shall act as the lead agency for processing and reviewing the proposed transfer as required under CEQA, and BUYERS and DWR shall act as responsible agencies.

(c) Subject to the limits specified in 7(c)(i) and (ii), BUYERS shall reimburse WCWD, within 30 days of billing, for WCWD's reasonable actual out-of-pocket expenses, including WCWD's legal, environmental, and engineering consultants' fees and expenses incurred in obtaining approvals, carrying out its CEQA responsibilities and taking other actions (Such as reporting, monitoring and mitigation measures) necessary to negotiate, enter into and implement this Agreement and to perform the actions contemplated herein. WCWD will provide BUYERS with documentation for such expenses to the reasonable satisfaction of BUYERS.

(i) If WCWD provides less than 1,000 acre-feet of water pursuant to Section 5(a) at the point of delivery, WCWD shall be reimbursed as provided in this Section 7(c) up to a maximum of \$5,000.

(ii) If WCWD provides 1,000 or more acre-feet of water pursuant to Section 5(a) at the point of delivery, WCWD shall be reimbursed as provided in this Section 7(c) \$5 per

acre-foot of the BUYER'S request pursuant to Section 6(a) that DWR determines is transferable, up to a maximum of \$20,000.

(iii) However, if the Buyers notify WCWD pursuant to Section 6(a) that Buyers will not buy the water offered, then WCWD will be reimbursed as specified in (i) and (ii) above based on the amount of water WCWD offered pursuant to Section 6(a).

(d) If litigation is commenced under CEQA, and BUYERS and WCWD decide to proceed with the transfer and contest such litigation, WCWD will take all necessary and appropriate actions to defend the action on behalf of both BUYERS and WCWD. Except as provided in Section 7(d)(ii), BUYERS shall, in addition to payment for the water pursuant to Section 5 and expenses pursuant to Section 7(c), reimburse WCWD, within 30 days of billing, for 100% of WCWD's reasonable actual out-of-pocket expenses, including WCWD's legal, environmental, attorneys' and engineering consultants' fees and expenses incurred in defending the action and in complying with any judicial order or remedy ordered therein. The Parties shall exercise reasonable efforts to cooperate with each other in defending the litigation. WCWD will provide BUYERS with documentation for such expenses to the reasonable satisfaction of BUYERS. Notwithstanding anything to the contrary in this Agreement, if WCWD decides not to move forward with the litigation, the BUYERS are not obligated to make payments pursuant to Sections 5 and 7(d) and WCWD is not obligated to fallow lands pursuant to Section 6, except to the extent that Buyers will pay for water already delivered.

(i) Subject to Section 7(d)(ii), BUYERS shall bear their own costs of litigation, shall pay any monetary award associated with the litigation and shall be responsible for funding and complying with any and all remedial orders of the court, including, but not limited to, expenses related to the prevailing party's attorneys' fees, mitigation credits, costs of

preparing any required environmental documentation, or any other remedial order the court may impose against WCWD.

(ii) As to claims solely challenging WCWD's conduct in WCWD's service area or above the point of delivery, and excepting claims, including CEQA lawsuits, that shall be governed by Sections 7(d) and 7(d)(i), WCWD shall bear its own fees and costs of defending against such claims on behalf of both WCWD and BUYERS, and BUYERS shall participate in defending against such claims to the extent they deem necessary or appropriate, in BUYERS' sole discretion. BUYERS shall bear their own fees and costs of defending against such claims. For claims not subject to Section 7(d) or Section 7(d)(i), WCWD shall bear its own fees and costs of defending against such claims and shall pay any monetary awards associated therewith, including but not limited to the costs of complying with any judicial order or remedy ordered therein including, but not limited to, expenses related to the prevailing party's attorneys' fees or any other remedial order the court may impose against WCWD.

(e) Notwithstanding anything to the contrary in Sections 7(c) and 7(d), BUYERS shall not be required to reimburse WCWD for the time spent by its directors, officers or employees relating to this transfer.

(f) BUYERS and WCWD are required to obtain DWR's agreement, that: (i) the quantity of water made available by WCWD at the point of delivery under this Agreement, calculated as described in Appendix A, is transferable to BUYERS; and (ii) DWR will divert the quantity of water calculated pursuant to Section 6(b), less carriage water losses assessed by DWR, at the H.O. Banks Pumping Plant for delivery to BUYERS, consistent with BUYERS' SWP water supply contract. WCWD will cooperate with and assist BUYERS as necessary to obtain DWR's agreement, but WCWD shall not act as a guarantor of such an

agreement. BUYERS and WCWD acknowledge that DWR's approval will occur subsequent to executing this Agreement. If DWR's agreement is not obtained, BUYERS and WCWD will confer to determine whether they will mutually agree to continue this Agreement, with or without appropriate amendments.

(g) WCWD and BUYERS shall jointly obtain any and all other necessary approvals required to effectuate the water transfer under this Agreement.

(h) The rights, obligations and commitments described in Sections 4, 5, and 6 shall not be effective (i) unless the environmental reviews have been completed, and the approvals, with the exception of DWR's subsequent approval acknowledged in Section 7(f), agreements and consents required in this Section 7 of this Agreement have been obtained by April 13, 2012, unless any such approval, agreement or consent is waived in writing by both WCWD and BUYERS, or (ii) if litigation challenging WCWD's CEQA compliance or seeking to enjoin performance under this Agreement is pending in any state or federal court as of April 13, 2012. If this Agreement is executed with the Parties' knowledge that such approvals have not been obtained and such litigation has been initiated, then Sections 7(h)(i) and (ii) shall be deemed satisfied and indicative of the Parties' intent to proceed with this Agreement notwithstanding such outstanding approvals and litigation. If the approvals, agreements and consents required in Section 7 are not obtained in a manner satisfactory to either Party by April 13, 2012, or if litigation seeking to enjoin performance is pending on April 13, 2012, either Party may terminate this Agreement; *provided*, that if the Agreement is terminated BUYERS shall be obligated to make any payments required by Section 7 for WCWD's out-of-pocket costs incurred prior to termination.

8. ***Water Rights Not Affected.*** No transfer of water pursuant to this Agreement shall confer any appropriative, public trust or other right to water on any person or entity. Nothing

in this Agreement shall act as a forfeiture, diminution or impairment of any rights of WCWD to its full deliveries of water after the expiration of the Agreement, and shall in no way prejudice any of WCWD's rights thereto. Consistent with the provisions of California Water Code sections 109, 475, 1011, 1244, and 11961, the Parties agree that no transfers under this Agreement, nor the Agreement itself, is evidence of the availability of surplus water beyond the term of the Agreement, nor evidence of lack of beneficial use of the water involved in the transfer, and they shall not contend otherwise. The only rights granted to the Parties as a result of this Agreement are those expressly set forth herein.

9. General Indemnity. Subject to the provisions of Section 7(d) regarding allocation of litigation expenses, each Party (that is, WCWD on the one hand, and BUYERS on the other hand) agrees to protect, defend, indemnify, and hold harmless the other Party and its/their directors, officers, agents, servants, employees and consultants, in addition to the State Water Contractors directors and employees, from and against any and all losses, claims, liens, demands and causes of action of every kind and character, without limitation by enumeration, occurring or in any way incident to, connected with, or arising directly or indirectly out of the performance or non-performance by the indemnifying Party hereunder.

10. Construction and Interpretation. It is agreed and acknowledged by the Parties that this Agreement has been arrived at through negotiation, and that each Party has had a full and fair opportunity to revise the terms of this Agreement. Consequently, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in construing or interpreting this Agreement.

11. Obligations Prior to Termination. Notwithstanding any other provision hereof, the obligations of the Parties incurred pursuant to this Agreement prior to the termination of this Agreement, including without limitations the obligations to make payment for Participating

Acres and to make refunds as required, shall survive the termination.

12. Severability. The invalidity, illegality or unenforceability of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

13. Governing Law. This Agreement shall be interpreted and enforced pursuant to the laws of the State of California.

14. Modifications. This Agreement can only be modified by a written instrument executed by both Parties.

15. Entire Agreement. This Agreement contains the entire understanding of the Parties related to their interests, obligations, and rights in connection with the subject matter set forth herein. All prior communications, negotiations, stipulations, and understandings, whether oral or written, are of no force or effect, and are superseded, except as referenced herein.

16. No Third Party Beneficiary. The Parties to this Agreement do not intend to create any third party beneficiaries to this Agreement, and expressly deny the creation of any third party beneficiary rights hereunder toward any person or entity.

17. Time. Time is of the essence in the performance of each and every term of this Agreement.

18. Waiver. The waiver or failure to declare a breach as a result of the violation of any term of this Agreement shall not constitute a waiver of that term or condition and shall not provide the basis for a claim of estoppel, forgiveness or waiver by any Party to that term or condition.

19. Attorneys' Fees. If it shall be necessary for any Party hereto to commence legal action or arbitration to enforce the terms and provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees, expenses and costs incurred therein. The expenses and costs incurred shall include, without limitation to other reasonable expenses and costs, the costs

of any experts employed in either the preparation or presentation of any evidence in such proceedings.

20. Captions. The section and subsection captions in this Agreement are for convenience only and shall not be used in construing the Agreement.

21. Additional Documents. Each Party agrees to make, execute, and deliver any and all documents and to join in any application or other action reasonably required to implement this Agreement.

22. Notice. Any and all communications and/or notices in connection with this Agreement shall be either hand-delivered or sent by United States first class mail, postage prepaid, and addressed as follows:

To: WCWD
Ted Trimble
Western Canal Water District
P.O. Box 190
Richvale, CA 95974

To: State Water Contractors

Eric Chapman
1121 L Street, Suite 1050
Sacramento, CA 95814-3944

To: BUYERS

See **Appendix B** attached hereto for list of names and addresses of BUYERS.

The Parties may change the foregoing addresses by providing written notice in compliance with this section.

23. BUYERS' Liability. BUYERS, and each of them, shall be jointly and severally liable for complying with the obligations, liabilities, terms and conditions of this Agreement, including, without limitation, the obligations set forth in Sections 5 and 7.

24. *Counterparts; Facsimile Execution.* This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon, provided such signature page is attached to any other counterpart identical thereto except for having an additional signature page executed by any other party. Each Party agrees that each other Party may rely upon the facsimile signature of any party on this Agreement as constituting a duly authorized, irrevocable, actual, current delivery of this Agreement as fully as if this Agreement contained the original ink signature of the Party supplying a facsimile signature.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of
the day and year first written above.

WESTERN CANAL WATER DISTRICT

By: Ted Tr
Title: General Manager

Dated: 4-20-12

By: _____
Title: _____

Dated: _____

DUDLEY RIDGE WATER DISTRICT

By: D. F. Hill
Title: MANAGER-ENGINEER

Dated: 4-20-2012

By: _____
Title: _____

Dated: _____

KERN COUNTY WATER AGENCY

By: J. M. Bl
Title: General Manager

Dated: 4/19/12

By: _____
Title: _____

Dated: _____

APPENDIX A

Table 1

Western Canal Water District Acreage Data 2012 Crop Year

Total Standby Acreage	Total Rice Acreage	Irrigated Rice Acreage
58,140	52,300	52,300

The total standby acreage within WCWD is based on Farm Service Administration records of total irrigable acres for each field within WCWD boundaries.

The total rice acreage is the land within WCWD dedicated to rice production, derived by subtracting non-rice acreage (orchards, etc.), from the total standby acreage.

Irrigated rice acreage is that rice acreage for which irrigation water was requested by the landowner or grower, and delivered by WCWD to that acreage.

Some landowners within WCWD did not plant all of their available rice acreage in 2011. These lands constitute idled or fallowed acreage during that crop year. Idled acreage is determined by subtracting irrigated rice acreage from total rice acreage for each landowner within WCWD.

Table 2

Water Production Schedule (Based on ETAW for rice of 3.3 AF/acre, and 11,628 Participating Acres¹)

	<u>May</u>	<u>June</u>	<u>July</u>	<u>August</u>	<u>September</u>	<u>Total</u>
ETAW in Percent	15	22	24	24	15	100
Water Production (In Acre Feet)	5,755.86	8,441.93	9,209.38	9,209.38	5,755.86	38,372.4

¹ Participating acres cannot be irrigated from any source.

APPENDIX B

Buyer's Addresses

To: Dudley Ridge Water District

c/o Rick Besecker
Provost & Pritchard Engineering Group, Inc.
286 W. Cromwell Avenue
Fresno, CA 93711-6162

To: Kern County Water Agency

Larry Rodriguez
1121 L Street, Suite 810
Sacramento, CA 95814-3944